

STATE OF MICHIGAN
COURT OF APPEALS

EMANUEL STEWARD and EMANUEL
STEWART ENTERPRISES, INC.,

UNPUBLISHED
January 7, 2003

Plaintiffs/Counter Defendants-
Appellants,

v

THOMAS P. CASEY, Successor Trustee of the
CLEMENS F. MEIER REVOCABLE LIVING
TRUST,

No. 232879
Wayne Circuit Court
LC No. 00-006650-CK

Defendant/Counter Plaintiff-
Appellee.

Before: O'Connell, P.J., and White and B. B. MacKenzie*, JJ.

PER CURIAM.

Plaintiffs Emanuel Steward and Emanuel Steward Enterprises, Inc., appeal as of right from the trial court's order granting summary disposition to defendant Thomas P. Casey, successor trustee of the Clemens F. Meier Revocable Living Trust, pursuant to MCR 2.116(C)(7). We affirm.

Plaintiffs entered into a commercial lease of a restaurant with Clemens Meier on October 29, 1993. Shortly thereafter, Emanuel was approached by F.D. Stella Products Company, who advised him that it owned the restaurant fixtures and equipment on the premises and threatened to remove them. Emanuel executed a note and security agreement for the purchase of the fixtures and equipment. In October and November 1994, the City of Detroit (Personal Property Tax Division) padlocked the leased premises, claiming a personal property tax seizure against all personal property fixtures and equipment. Shortly after this seizure, Meier brought suit against Emanuel Steward Enterprises, Inc., for unpaid rent. In November 1998, defendant brought suit against plaintiffs in circuit court. Defendant alleged breach of contract and damages for rentals due, late fees, attorney fees, and accrued water bills. Following a bench trial, the trial court entered a \$107,078.62 judgment in favor of defendant and against both plaintiffs, individually, jointly, and severally.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

In March 2000, plaintiffs filed the present action. Plaintiffs alleged that defendant made fraudulent representations about defendant's ownership interest in the restaurant fixtures and equipment on the leased premises; that pursuant to section 6.02 of the lease, plaintiffs should be indemnified for all attorney fees and costs expended by plaintiffs to protect their leasehold interest; and that plaintiffs lost considerable profits and suffered irreparable harm because of the "lockout." Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). However, the court proceeded under MCR 2.116(C)(7), on the ground that plaintiffs' claims were barred because of prior judgment. The trial court granted defendant's motion for summary disposition, concluding that plaintiffs' action was barred by res judicata.

"The applicability of the doctrine of res judicata is a question of law that we . . . review de novo." *Ditmore v Michalik*, 244 Mich App 569, 574; 625 NW2d 462 (2001).

Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies.

Michigan courts have broadly applied the doctrine of res judicata. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. [*Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001), quoting *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999) (citations omitted).]

In addition to these requirements, the decree in the previous action must be a final decision. *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 379-380; 521 NW2d 531 (1994).

In this case, the previous lawsuit was decided on the merits and was a final decision. Moreover, plaintiffs and defendant were both parties to the previous action, only in the reverse. The previous action and plaintiffs' present claims arise from the same transaction – that being the 1993 lease.

Plaintiffs contend that when the 1998 case was filed, MCR 2.203 did not require the compulsory joinder of claims, and so the doctrine of res judicata should not apply. Although plaintiffs may not have been required to raise the present claim in the previous action because of the court rule that was in effect at the time of that litigation, plaintiffs could have done so. The law is clear that the common law doctrine of res judicata bars not only claims that were litigated previously, but also "every claim arising from the same transaction that the parties, exercising reasonable diligence, *could* have raised but did not." *Sewell, supra* at 575 (emphasis added).

Plaintiffs also contend that defendant waived the joinder rules by not objecting in the previous proceeding to the failure to join claims. Former MCR 2.203(A)(2) stated:

Failure to object in a pleading, by motion, or at a pretrial conference to improper joinder of claims or failure to join claims required to be joined constitutes a waiver of the joinder rules, and the judgment shall only merge the claims actually litigated. This rule does not affect collateral estoppel or the prohibition against relitigation of a claim under a different theory.

However, this court rule was amended. “The February 2, 1999 amendment of subrule (A), effective June 1, 1999, omitted the provision that made failure to object to improper joinder a waiver of the joinder rules.” MCR 2.203, Staff Comment to 1998 Amendment. The comment further stated that this amendment was recommended to facilitate operation of the preexisting common law doctrine of res judicata. *Id.*¹ The trial court did not state on the record or in its order whether it applied former MCR 2.203(A)(2), or the amended court rule. However, because the trial court granted the motion, it appears that the court applied MCR 2.203, as amended. Reading MCR 2.203 in light of the 1998 amendment, and looking at the time frame in which the instant action was filed, we conclude that the trial court did not err in applying MCR 2.203, as amended. See MCR 1.102, cited in *Reitmeyer v Schultz Equipment & Parts Co, Inc*, 237 Mich App 332, 336, 337; 602 NW2d 596 (1999) (a court may apply subsequently amended court rules to pending actions).

Therefore, the trial court properly granted defendant’s motion for summary disposition on the basis of res judicata.

In light of our holding, it is unnecessary to address the parties’ remaining issues.

Affirmed.

/s/ Peter D. O’Connell
/s/ Barbara B. MacKenzie

¹ We note that staff comment to the Michigan Court Rules is not binding authority. *People v Grove*, 455 Mich 439, 456; 566 NW2d 547 (1997).